

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

EXPERIENCE INFUSION CENTER, LL.C.	§	
PLAINTIFF	§	
	§	
VS.	§	CIVIL ACTION NO. 17-00034
	§	
AETNA LIFE INSURANCE COMPANY (ALIC)	§	
DEFENDANT	§	

PLAINTIFF'S FIRST ORIGINAL COMPLAINT

Plaintiff, Experience Infusion Center, LLC files this First amended original complaint, complaining of defendants TEXAS HEALTH & AETNA INSURANCE HOLDING CO, LL.C AND AETNA LIFE INSURANCE COMPANY.

By this First amended complaint, Plaintiff seeks to dismiss all claims against TEXAS HEALTH & AETNA INSURANCE HOLDING CO, LL.C ONLY. Further, by this complaint, Plaintiff seeks recovery for actual damages, statutory penalties and interest, and attorney's fees, for Defendants' improper violations of the Texas Prompt Pay Act. Plaintiff s First Amended Original Complaint is set forth as follows:

STATEMENT OF CLAIMS

1. This case involves the a. Texas Prompt Pay Act case, b. Suit On Sworn

Account/Account Stated, c. **Fraud, d. Negligent Misrepresentation, Acts Of Agents Imputed To Principal.** Plaintiff is a licensed health care provider .who provided infusion care services to a number of Defendants' insureds as an out of network provider in the State of Texas. All the infusion care services were provided to Defendants' insured in the State of Texas. During the time when these patients were provided infusion care services, Plaintiff was a licensed health care provider with a valid NPI number through which claims for infusion care services were submitted to Defendants for payment. During this time, Plaintiff was also credentialed by Defendants to provide infusion care services to its insureds as an out of network provider. All of the claims for infusion care services that were submitted by Plaintiff to Defendants for payment were expected to be properly and timely paid by Defendants according to the requirements of the Texas Prompt Pay Act; and, at the payment rate contained in the bills or invoices submitted to Defendants for payment. Despite the requirements of the Texas Prompt Pay Act,

2. Defendants failed to timely and properly pay Plaintiff s claims, resulting in substantial damages. By filing this lawsuit, Plaintiff seeks to recover actual damages, statutory penalties and interest, and attorney's fees for all of the unpaid claims and underpaid claims for infusion care services that Defendants

refused and/or failed to timely and properly pay in compliance with the Texas Prompt Pay Act.

3. To be clear, Plaintiff seeks recover the difference between the full amount billed and, the amount paid, if any, for each and every infusion care service claim that Plaintiff submitted to Defendant for payment in regard to the infusion care services provided to Defendants' insureds

4. Plaintiff is in the business of providing health care services.

Plaintiff provided healthcare services to the patients attached in Exhibit A” (“services”) in the amount of \$26,832,479.98 and the Defendant paid, \$7,889,522.42 leaving a remainder of the mount of \$18,814,941.73 still owed to the Plaintiff. See attached Exhibit “A”

5. In support of these damages, Plaintiff has prepared a spreadsheet that itemizes the individual claims data information for each claim at issue in this case. A Joint HIPAA compliant Qualified Protective Order has been filed by the parties the spreadsheet will be produced to Defendants. Plaintiff was assigned benefits as a provider.

6. Monies owed Plaintiff on behalf of services provided were not paid although payments for said services were provided to the Defendant from her plan. Monies owed Plaintiff were also improperly offset by Defendant from other

patients that Plaintiff provided services for Plaintiff also contends that many of the offsets from said services were not properly offset given that Defendant failed to follow the proper procedures with respect to said, including but not limited to, The offsets are not proper; and The offsets are not timely.

II. PARTIES

.4. Plaintiff

7. Plaintiff is a health care provider doing business as an infusion care center in Houston, Texas. Plaintiff is a resident and citizen of the State of Texas. At all times material to this case; Plaintiff provided infusion care services to Defendant's insureds as an out of network provider in the State of Texas. During the time period when these patients were provided infusion care services, Plaintiff was a licensed health care provider with a valid NPI number through which claims for infusion care services were submitted to Defendants for payment. During this time period, Plaintiff was also credentialed by Defendants to provide infusion care services to its insureds as an out of network provider; and, all patient care and treatment occurred in Texas.

B. Defendants

8. Defendant ALIC is a corporation that was incorporated in the State of Connecticut and had its principal place of business in the State of Connecticut at the time the State Court Action was filed. ALIC continues to be incorporated in and have its principal place of business in the State of Connecticut. ALIC did not have its principal place of business in the State of Texas and was not incorporated in the State of Texas at the time of the filing of the State Court Action or at the time. This Defendant may be served with citation through the following registered agent for service of process: Corporation Service Company, 211 East 7th Street Suite 620, Austin TX 78701-3218. The Clerk is requested to issue service of citation at this time so that this Defendant may answer and make an appearance in this lawsuit. This Defendant may be served with citation through the following registered agent for service of process: Corporation Service Company, 211 East 7th Street Suite 620, Austin TX 78701-3218. The Clerk is requested to issue service of citation at this time so that this Defendant may answer and make an appearance in this lawsuit.

III. JURISDICTION AND VENUE

A. Jurisdiction

9. This Court has both subject matter and personal jurisdiction over Defendants.

Pursuant to § 1332(a) of the United States Code, this Court has diversity jurisdiction over this case. 28U.S.C.A. § 1332(a) (West 2015). The amount in controversy for this case, exclusive of interest and costs, exceeds the sum or value of \$75,000.00; and Plaintiff and Defendants are citizens of different States.

Specifically, Plaintiff is a citizen of the State of Texas and Defendants are citizens of the State of Illinois.

10. Accordingly, this Court may exercise subject matter jurisdiction over this case.

This Court has personal jurisdiction over Defendants in this case for the following reasons: (1) At all times material to this case, Defendants were (and still are) licensed by the State of Texas as insurers to provide health insurance benefits to insureds in the State of Texas; (2) At all times material to this case, Defendants provided (and still provide) health insurance benefits to thousands of Texans all across the State of Texas and in the Southern District of Texas; (3) Defendants were the health insurers that provided health insurance benefits to the patients/insureds who were provided with out of network infusion care services by Plaintiff in this case; and, (4) The claims for infusion care services that were submitted to Defendants for full and prompt payment by Plaintiff were submitted to Defendants, processed by Defendants, and not properly or timely paid by Defendants in the State of Texas.

11. In sum, the evidence shows that this Court may exercise both general and specific personal jurisdiction over Defendants. Given the fact that Defendants conduct a substantial amount of business in the State of Texas and have purposefully availed themselves of the privileges and benefits of conducting business in the State of Texas, including the adjudication of claims of this nature in federal court in the State of Texas, Defendants have both continuous and systematic contacts with the State of Texas to support the exercise of general personal jurisdiction over Defendants. Additionally, based on their conduct in this case, Defendants have sufficient minimum, purposeful contacts with the State of Texas for this Court to exercise specific personal jurisdiction over these Defendants in this case. Finally, given Defendants' connection to the State of Texas, the exercise of personal jurisdiction over Defendants does not offend traditional notions of fair play and substantial justice.

B. Venue

12. Venue is proper in this Court and Division under § 1391(b)(1)-(2) of the United States Code because all Defendants "reside" in the State of Texas (in which this judicial district is located) based on the provisions of §§ 1391 (c)(2) and 1391(d) of the United States Code; and, all or a substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district. 28 U.S.C.A. § 1391(b)(1)-(2) (West

2015); 28 U.S.C.A. §§ 1391(c)(2), 1391(d) (West 2015).

13. A civil action can be brought in a judicial district in which any defendant resides and a judicial district in which all or a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C.A. § 1391(b)(1)-(2) (West 2015). Venue is appropriate in this Court and division according to the venue provisions set forth in § 1391(b)(1)-(2) of the United States Code; and, §§ 1391(c)(2) and 1391(d) of the United States Code. 28 U.S.C.A. § 1391(b)(1)-(2) (West 2015); 28 U.S.C.A. §§ 1391(c)(2), 1391(d) (West 2015).

Pursuant to §§ 1391(c)(2) and 1391(d) of the United States Code

14. Defendants are corporate entities with the capacity to sue and be sued in their common name under applicable law. 28 U.S.C.A. §§ 1391(c)(2), 1391(d) (West 2015). Defendants are also subject to personal jurisdiction in the State of Texas and this district. *Id.* Accordingly, Defendants are deemed, to reside in this district for venue purposes because Defendants are subject to personal jurisdiction with respect to the civil action in question. 28 U.S.C.A. §§ 1391(c)(2), 1391(d) (West 2015). Venue is proper in this Court and Division under 28 U.S.C.A. § 1391(b)(1) (West 2015)

15. Venue is also proper in this Court and Division under § 1391(b)(2) of the United States Code because all or a substantial part of the events giving rise

to Plaintiff's claims occurred in this judicial district. 28 U.S.C.A. § 1391(b)(2) (West 2015). As stated above, the claims asserted by Plaintiff against Defendants seek relief under the Texas Prompt Pay Act. At the time of the events giving rise to this lawsuit, Plaintiff provided infusion care services to patients at multiple office locations in the Houston, Harris County area as well as in Highlands, Chambers County, Texas. All of the infusion care services that were provided to Defendants' insureds, in this case were provided in the State of Texas. The individual insureds to whom infusion care services were provided in this case live in Houston, Harris County, Texas and League City, Galveston County, Texas. All of the bills, invoices, or claims for infusion care services that were submitted to Defendant for payment on services rendered were sent to Defendants from Texas; and, were processed by Defendants in Texas.

IV. STATEMENT OF FACTS

16. The claims asserted by Plaintiff against Defendant seek relief under the Texas Prompt Pay Act and. All of the infusion care services that were provided to Defendants' insureds were provided in the State of Texas. All of the bills, invoices, or claims for infusion care services that were submitted to Defendant for payment on services rendered were sent to

Defendants from Texas; and, were processed by Defendants in Texas.

Each of the patients who received infusion care services from Plaintiff

during the time period at issue in this case received their health

insurance benefits through Defendants; however, none of the health

insurance benefits were provided to these patients as a part of any

ERISA-based health plan. Accordingly, no provision of the Employee

Retirement Income Security Act ("ERISA") applies to this case. Instead,

the statement statutory duties and obligations owed to Plaintiff by

Defendants arise exclusively from the independent legal duties owed by

an insurer to out of network, infusion care providers, under the Texas

Prompt Pay Act. These claims are detailed below.

17. At all times, relevant to the allegations contained in this complaint,

Defendants were "insurers" as this term is defined in the Texas

Insurance Code. TEX. INS. CODE ANN. § 1301.001 (S)(Vernon 2015)

(stating that the term "insurer" means a life, health, and accident insurance

company, health and accident insurance company, health insurance

company, or other company operating under Chapters 841, 842, 884, 885,

982, or 1501 of the Texas Insurance Code, that is authorized to issue,

deliver, or issue for delivery in the State of Texas health insurance policies). During the relevant time periods for this case, Defendants were licensed to do business in the State of Illinois and Texas as a health insurance company. As a licensed insurer doing business in the State of Texas, Defendants are subject to the laws of the State of Texas governing unfair trade practices and the prompt payment of claims, including the provisions of the Texas Prompt Pay Act.

18. At all times relevant to the allegations contained in this complaint, Plaintiff was a health provider who provided specialty or other medical care or health care services at the request of an in network, preferred provider because the services provided by Plaintiff were not reasonably available from an in network preferred provider who was included in the preferred delivery network.

19. Plaintiff provided infusion care services to patients who received their health insurance through Defendants. At the time the infusion care was provided to these patients, Plaintiff was an out of network provider, meaning that Plaintiff did not have a written provider contract with Defendants by which Plaintiff and Defendants had agreed upon

particular fee for service rates for the provision of infusion care to Defendants' insureds. All of the infusion care services provided Defendants' insureds constitute "specialty or other medical care or health care services" that were provided to Defendants' insureds at the request of an in network, preferred provider named Patricia Salvato, M.D. The infusion care services were requested by Dr. Salvato because the infusion care services provided by Plaintiff were not reasonably available from an in network preferred provider who was included in the preferred delivery network. Accordingly, Plaintiff has standing under the Texas Prompt Pay Act to assert a claim for actual damages, penalties and interest, and attorney's fees. TEX. INS. CODE ANN. § 1301.069(1)(2)(B) (Vernon 2015). Once the infusion care was provided to these patients, Defendants were billed for the infusion care services that were provided by Plaintiff through the submission of a "clean" claim as defined in the Texas Insurance Code. TEX. INS. CODE ANN. § 1301.131 (Vernon 2015); TEX. INS. CODE ANN. § 843.336 (Vernon 2015). The claims for infusion care services were submitted by Plaintiff to Defendants for payment in electronic format.

20. All the claims submitted to Defendants for payment complied with all the

necessary elements of a clean claim as set forth in § 1301.131 and § 843.336 of the Texas Insurance Code. TEX. INS. CODE ANN. § 1301.131 (Vernon 2015); TEX. INS. CODE ANN. § 843.336. (Vernon 2015). Plaintiff s clean claims were timely submitted to Defendants for prompt payment, not later than the 95th day after the date Plaintiff provided the infusion care services for which the claim was made in compliance with §§ 1301.102 and 843.337 of the Texas Insurance Code. TEX. INS. CODE ANN. § 1301.102 (Vernon 2015); TEX. INS. CODE ANN. § 843.337 (Vernon 2015).

21. Defendants were required to pay Plaintiff for the clean claims (at the specified rate billed to Defendants by Plaintiff) that were properly and timely submitted to Defendants within the statutorily prescribed 30 day deadline set forth in §§ 1301.103 and 843.338 of the Texas Insurance Code. TEX. INS. CODE ANN. § 1301.103 (Vernon 2015); TEX. INS. CODE ANN. § 843.338 (Vernon 2015); TEX. INS. CODE ANN. § 1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of network providers); Tux. INS. CODE ANN. § 843.351 (Vernon 2015) (same); TEX. INS. CODE. ANN. § 1301.056 (Vernon 2015) (prohibiting insurers and third party

administrators from unilaterally discounting or refusing to pay out of network providers for services rendered at the rate billed by provider).

22.Despite the timely and proper submission of clean claims, Defendants did not: (1) contest or dispute Plaintiff s claims within the 30-day deadline for action; (2) determine that the clean claims submitted by Plaintiff were payable at the rate of payment set forth by Plaintiff, and (3) did not pay the billed charges submitted by Plaintiff according to the rate of payment set forth in the clean claim forms submitted by Plaintiff, as required under Texas law. TEX. INS. CODE ANN. § 1301.103 (Vernon 2015); TEX. INS. CODE ANN. § 843.338 (Vernon 2015); TEX. INS. CODE ANN. §. 1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of net work providers); TEX. INS. CODE ANN. § 843.351 (Vernon 2015) (same); TEX. INS. CODE. ANN. § 1301.056 (Vernon 2015) (prohibiting insurers and third party administrators from unilaterally discounting or refusing to pay out of network providers for services rendered at the rate billed by provider).

23.In violation of the Texas Prompt Pay Act, Defendants failed to timely and properly pay Plaintiff for the full amount of the billed charges

submitted to Defendants for services rendered on these infusion care patients as required by the Texas Prompt Pay Act. Consequently, Plaintiff has experienced substantial actual damages; and, seeks all relief available under the Texas Prompt Pay Act, including actual damages, statutory penalties and interest, and attorney's fees for claims that were never paid at all; and, for those claims that were improperly and untimely underpaid by Defendants in violation of the Texas Prompt Pay Act.

V. TEXAS PROMPT PAY ACT CLAIMS

24. As outlined above, this is a case in which Plaintiff is pursuing its remedies under the Texas Prompt Pay Act. TEX. INS. CODE. ANN. §§ 1301.101-1301.109 (Vernon 2015) and TEX. INS. CODE. ANN. §§ 843.336-843.354 (Vernon 2015). Despite the timely and proper submission of clean claims, Defendants did not: (1) contest or dispute Plaintiff's claims within the 30 day dead line for action; (2) determine that the clean claims submitted by Plaintiff were payable at the rate of payment set forth by Plaintiff, and (3) did not pay the billed charges submitted by Plaintiff according to the rate of payment set forth in the clean claim forms submitted by Plaintiff, as required under Texas law.

TEX. INS. CODE ANN. § 1301.103 (Vernon 2015); TEX. INS. CODE ANN. § 843.338 (Vernon 2015); TEX. INS. CODE ANN. § 1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of network providers); TEX. INS. CODE ANN. § 843.351 (Vernon 2015 (same); TEX. INS. CODE ANN. § 1301.056 (Vernon 2015) (prohibiting insurers and third party administrators from unilaterally discounting or refusing to pay out of network providers for services rendered at the rate billed by provider).

25. In violation of the Texas Prompt Pay Act, Defendants failed to timely and properly pay Plaintiff for the full amount of the billed charges submitted to Defendants for services rendered on these infusion care patients as required by the Texas Prompt Pay Act. Consequently, Plaintiff has experienced substantial actual damages; and, seeks all relief available under the Texas Prompt Pay Act, including actual damages, statutory penalties and interest, and attorney's fees for claims that were never paid at all; and, for those claims that were improperly and untimely underpaid by Defendants in violation of the Texas Prompt Pay Act.
26. For the wholly unpaid claims, Defendants are required to pay Plaintiff the total amount of the billed charges (actual damages); and, pursuant to §

1301.137(c) of the Texas Insurance Code, and § 843.342(c) of the Texas Insurance Code, a penalty in the amount of the lesser of: (1) 100 percent of the billed charges, as submitted by Plaintiff, or \$200,000.00 per claim submitted, plus 18 percent annual interest on this amount per claim. TEX. INS. CODE ANN. § 1301.137(c) (Vernon 2015); TEX. INS. CODE ANN. § 843.342(c) (Vernon 2015); TEX. INS. CODE ANN. § \1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of net . work providers); TEX. INS. CODE ANN. § 843.351 (Vernon 2015) (same). Interest on the individual claim amounts accrues beginning on the date the insurer was required to pay the claim and ending on the date the claim and the penalty are paid in full. TEX. INS. CODE ANN. § 1301.137(c) (Vernon 2015); TEX. INS. CODE ANN. § 843.342(c) (Vernon 2015); TEX. INS. CODE ANN. . § 1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of network providers); TEX. INS. CODE ANN. § 843.351 (Vernon 2009) (same).

27. For the claims that were improperly and untimely underpaid, Defendants are required to pay Plaintiff the total amount of the difference between 100 percent of the billed charges, as submitted by Plaintiff, and the amount that was partially paid (actual damages); and, all available relief under § 1301.137(d)-(f) of the Texas Insurance Code, and § 843.342(d)-(f) of the

Texas Insurance Code, including statutory penalties and interest on the lesser of: (1) underpaid amount for each claim (e.g., the difference between 100 percent of the billed charges, as submitted by Plaintiff, and the amount that was partially paid), or \$200,000.00 per underpaid claim submitted, plus 18 percent annual interest on this amount per claim. TEX. INS. CODE ANN. § 1301.137(d)-(f) (Vernon 2015); TEX. INS. CODE ANN. § 843.342(d)-(f) (Vernon 2015); TEX. INS. CODE ANN. § 1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of network providers); TEX. INS. CODE ANN. § 843.351 (Vernon 2015) (same). Interest on the individual claim amounts accrues beginning on the date the insurer was required to pay the claim and ending on the date the claim and the penalty are paid in full. TEX. INS. CODE ANN. § 1301.137(d)-(f) (Vernon 2015); TEX. INS. CODE ANN. § 843.342(d)-(f) (Vernon 2015); TEX. INS. CODE ANN. § 1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of network providers); TEX. INS. CODE ANN. § 843.351 (Vernon 2015) (same).

VI. SUIT ON SWORN ACCOUNT/ACCOUNT STATED

28. Plaintiff incorporates paragraphs 16 through 27 herein. Plaintiff would show the Court that it is entitled to recover damages based

upon its sworn account. This action is founded on open account for sale of goods and merchandise, business dealings between the parties, labor done, labor furnished and material furnished. The conduct of the Defendant constitutes a refusal and failure to pay the balance owing on the verified account attached hereto as Exhibit "A." As shown in the itemized and verified account attached hereto and on the dates evidenced thereby Plaintiff provided services and/or sold goods, wares, and merchandise to the Defendant in the regular course of business. Defendant accepted the goods and merchandise and thereby promised to and became bound to pay the agreed price, which price was reasonable, fair, and was stated in the request for payment therefor. Plaintiff does hereby, pursuant to its sworn account claim, sue, and assert its claim against Defendant for all of such damages, attorney fees, statutory damages plus all prejudgment and post-judgment interest allowed by law

VII. FRAUD

29. Plaintiff incorporates paragraphs 16 through 28 herein. In doing the acts herein alleged, Defendant made a material, false representation to Plaintiff. When the Defendant made the representation, the

Defendant knew the representation was false and/or made the representation recklessly, as a positive assertion, and without knowledge of its truth. The Defendant made this representation with the intent that the Plaintiff acts on it. The Plaintiff relied on the representation and the representation caused the Plaintiff injury, damages and actual loss. Defendant's fraud caused the Plaintiff's injury, to which specific performance and an award of monetary damages would be adequate compensation. Such damages include, without limitation, the loss of the agreed upon amount to be paid, as well as the time, labor and materials for the services along with attorney fees, statutory damages plus all prejudgment and post-interest allowed by law

VIII. NEGLIGENT MISREPRESENTATION

30. Plaintiff incorporates paragraphs 16 through 29 herein. Defendant made a representation to the Plaintiff in the course of the Defendant's business or in a transaction in which the Defendant had an interest. The Defendant supplied false information for the guidance of Plaintiff and did not exercise reasonable care or competence in obtaining or communicating the information. The Plaintiff justifiably relied on the

representation and the Defendant's negligent misrepresentation caused the Plaintiff's injury. Defendant's negligent misrepresentation caused the Plaintiff's injury. to which specific performance and an award of monetary damages would be adequate compensation. Such damages include, without limitation, the loss of the agreed upon amount to be paid, as well as the time, labor and materials for the services along with attorney fees, statutory damages plus all prejudgment and post-judgment interest allowed by law.

IX. ACTS OF AGENTS IMPUTED TO PRINCIPAL

31. Any averment herein of individuals is within the course and scope of their relationship with Defendant. Defendant negligently supervised their agents, servants and assigns, which proximately caused all damages sought herein. Specifically failure to supervise its agents, employees and assigns and any individuals whose acts and omissions proximately damaged Plaintiff.
32. Plaintiff incorporates paragraphs 16 through 31 herein. In the alternative, Defendant accepted goods or the creation of said goods from Plaintiff without compensating Plaintiff. Defendant would be unjustly enriched if it did not pay Plaintiff what was owed and

compensate Plaintiff for all damages sustained as a result of Defendant's acts and omissions.

X. ATTORNEYS FEES

Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code chapter 38 because this is a suit on rendered services, performed labor, furnished material, an account and a written or oral contract, which is listed in section 38.001. Plaintiff retained counsel, who presented Plaintiff's claim to Defendant. Defendant did not tender the amount owed within 30 days of the date the claim was presented.

VI. WAIVER

According to § 1301.103 and § 843.338 of the Texas Insurance Code, within 30 days of receiving an electronic "clean claim" (45 days for non-electronic clean claims) from an out of network provider, "the insurer *shall make a determination of whether the claim is payable and:*

1. If the insurer determines the entire claim is payable, pay the total amount of the claim in accordance with the contract between the preferred provider and the insurer;
2. If the insurer determines a portion of the claim is payable, pay the portion of the claim that is not in dispute *and notify the preferred provider in writing why the remaining portion of the claim will not be paid;* or
3. If the insurer determines that the claim is not payable, *notify the preferred provider in writing why the claim will not be paid.*"

Texas Insurance Code requires an insurer to pay or dispute an out of network provider's claim within the 30/45-day deadline. *Id.* There is no other time period provided in the statute to allow the insurer to fulfill its statutory duty to "make a determination of whether the claim is payable[.]" *Id.* In fact, the Prompt Pay Act contains multiple provisions that expressly prohibit any extension of the 30/45-day deadline to allow the insurer more time to fulfill its pay or dispute duties under §§ 1301.103 and 843.338 of the Texas Insurance Code. TEX. INS. CODE ANN. § 1301.1053 (Vernon 2015); TEX. INS. CODE ANN. § 843.3405 (Vernon 2015); TEX. INS. CODE ANN. § 1301.134(b) (Vernon 2015); TEX. INS. CODE ANN. § 843.349(b) (Vernon 2015).

None of Plaintiff's claims in this case were properly paid or disputed within the 30/45-day deadline. Defendants never alleged that any of Plaintiff's claims were improperly or untimely submitted for payment, or complained to Plaintiff that any claim submitted by Plaintiff was not a "clean claim" as defined by Texas law within the statutorily required time period . By failing to contest or dispute any of Plaintiff's claims within the 30/45 day deadline, Defendants have waived the ability to contest or dispute these claims in the context of this case. TEX. INS. CODE ANN. § 1301.137 (Vernon 2015); TEX. INS. CODE ANN. § 843.342

(Vernon 2009); TEX. INS. CODE ANN. § 1301.069 (Vernon 2015) (Texas Prompt Pay Act requirements apply to out of network providers) and TEX. INS. CODE ANN. § 843.351 (Vernon 2015) (same). Finally, none of the defenses set out in the Texas Prompt Pay Act that are potentially available to avoid the penalties discussed above are applicable. TEX. INS. CODE ANN. § 1301.137(h) (Vernon 2015) and TEX. INS. CODE ANN. § 843.342(h) (Vernon 2015).

VII. CONDITIONS PRECEDENT

Plaintiff has complied with all conditions precedent necessary to the filing of this lawsuit. Plaintiff has fulfilled all written notice requirements under Texas law that are necessary for the presentment of its Texas Prompt Pay Act claims and its claim for reasonable attorney's fees. In sum, all conditions precedent that form the basis of Plaintiff's claims against Defendants have occurred, been satisfied, or have been fulfilled.

VIII. JOINT AND SEVERAL LIABILITY

Defendants are jointly and severally liable for the Texas Prompt Pay Act violations that form the basis of this lawsuit.

IX. INTEREST AND COSTS

Plaintiff seeks the recovery of pre-judgment interest and post-judgment interest as authorized by law. Plaintiff also seeks recovery for all costs, including costs of

court.

X. JURY DEMAND

Plaintiff hereby demands a trial by jury as guaranteed by the Texas and U.S. Constitutions. Plaintiff has paid the jury fee for a jury trial.

XI. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for judgment against the Defendants, jointly and severally, as follows:

1. Actual damages in the amount of the difference between the actual amount paid, if any, and the total billed amount for each clean claim presented;
2. The statutory penalty and interest amount on each unpaid and underpaid claim at issue as calculated under § 1301.137 of the Texas Insurance Code, and § 843.342 of the Texas Insurance Code;
3. Reasonable attorney's fees as recoverable pursuant to § 38.001 of the Texas Civil Practice and Remedies Code and the Texas Prompt Pay Act;
4. Court costs;
5. Pre-judgment interest at the maximum legal rate;
6. Post-judgment interest at the maximum legal rate; and,
7. Such other and further relief as the Court may consider proper.

Respectfully submitted,

/S/Dioqu Kalu Dioqu ii. LL.M.
Dioqu Kalu Dioqu II, LL.M. (24000340)

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CERTIFICATE OF SERVICE

I hereby certify that on May 05th, 2017 I electronically filed the foregoing First Amended Original Complaint with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following at their e-mail address on file with the Court:

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Respectfully submitted,

/S/Dioqu Kalu Dioqu ii. LL.M.
Dioqu Kalu Dioqu II, LL.M. (24000340)